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6 Co-Counsel for Plaintiffs

7 IN THE UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF WASHINGTON
9 AT SPOKANE

10 In re } No. 04-08822-PCW-11

11 THE CATHOLIC BISHOP OF }
12 SPOKANE a/k/a THE CATHOLIC }
13 DIOCESE OF SPOKANE, a Washington }
14 corporation sole,, }
15 Debtor. }

16 JOHN DOE, JAMES DOE and JOSEPH }
17 DOE (pseudonyms), }

18 Plaintiffs, }

19 v. }
20 CATHOLIC ARCHIBISHOP OF }
21 SEATTLE, a Washington non profit }
22 corporation; CATHOLIC BISHOP OF }
23 SPOKANE, a Washington non profit }
24 corporation; and PATRICK }
25 O'DONNELL, individually, }

26 Defendants. }

Adv. Proc. No. 05-80004

DECLARATION OF
TIMOTHY D. KOSNOFF IN
SUPPORT OF REPLY TO
PLAINTIFF'S RESPONSE TO
MOTION TO REMAND

27 I, TIMOTHY D. KOSNOFF, hereby declare as follows:

28 DECLARATION OF TIMOTHY D. KOSNOFF - 1

29 FOSTER PEPPER & SHEFELMAN PLLC

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Background

There were nineteen clergy sexual abuse cases involving seven priests and sixty-five plaintiffs pending against the Catholic Bishop of Spokane¹ in the Superior Court of Spokane County on the date of the bankruptcy². The majority of cases had been pending for more than a year and two had been pending for more than two years. The bankruptcy was filed on the eve of trial of three cases involving twenty-five plaintiffs.

Three of the state court cases have 10 or more plaintiffs each; one has seven plaintiffs; one has four plaintiffs; one has three plaintiffs; two have two plaintiffs and ten are single plaintiff cases.

The abuse allegations include genital fondling/digital rape, genital mutilation and incidents of oral and anal sodomy. With one exception, there are no issues of repressed memory.

The Kosnoff/Pfau/Rasmussen/Allison legal team represents fifty-eight plaintiffs currently in suit; Allison/Withey represent two; Thornton/Anderson represent three; Conklin represents two and Gatti/Rasmussen one.

Upon the lifting of the automatic bankruptcy stay, Kosnoff/Pfau will file seven additional state court cases against the Catholic Bishop of Spokane on behalf of seventeen additional plaintiffs involving three additional priests and one previously named priest.

All the state court cases share a general legal theory that the Spokane diocese either possessed actual knowledge or should have known that these priests were child sexual abusers that posed a threat to children and, that it failed to stop them.

¹ Additional party defendants in some cases include the offending priests, the Catholic Archbishop of Seattle; the Catholic Bishop of Yakima; and the Boy Scouts of America.

² The Bankruptcy was filed December 6, 2004.

1 A majority of the state court cases present extensive evidence that the diocese
2 possessed recurring knowledge the priest was an abuser prior to or during the times
3 abuse was occurring. The remaining cases present strong circumstantial evidence or
4 “red-flags” that, taken together with a now well-documented history³ of sexual
5 contact between Catholic priests and children – conduct so common, persistent and
6 well-known to hierarchical clergy throughout the Spokane Diocese and the world-
7 wide Catholic Church – the diocese, should have known, and, through inaction,
8 effectively ratified the misconduct.

9 The state court complaints allege standard, garden-variety, common law
10 causes of action including sexual assault, intentional and negligent infliction of
11 emotional distress, negligence, negligent failure to warn or protect, negligent
12 supervision; statutory violation of the mandatory child abuse reporting statute; civil
13 conspiracy, fraudulent concealment and wrongful death. None of the cases are
14 grounded in any federal statute, constitutional provision or right. No federal
15 questions are raised by the complaints and there is otherwise no basis for the
16 assertion of federal jurisdiction.

17 Discovery and Pre-Trial Motions as of the date of the Bankruptcy

18 At the time of the bankruptcy, written discovery was complete or nearly
19 complete in five cases involving 36 plaintiffs.

20 The state court had ruled on a key document production dispute, ordering the
21 diocese to produce all the diocesan priest personnel files to plaintiffs.

22 Thirty-five plaintiff depositions and nine of eleven scheduled expert
23 depositions had been completed in state court at the time of the bankruptcy.

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25
26 ³ See, A Report on the Crisis in the Catholic Church National Board Report, United
States Conference of Catholic Bishops, <http://www.usccb.org/nrb/>

1 Forensic damage assessments and DME's for twenty-seven plaintiffs had been
2 completed or were nearly complete at that the time of the filing.

3 Discovery was nearly complete in three Father O'Donnell cases involving
4 twenty-five plaintiffs and each was within a month of its scheduled trial date. All
5 dispositive motions had either been ruled upon or the deadlines for filing had passed
6 or were about to pass.

7 The Spokane Diocese filed one hundred and nine *motions in limine*, all of
8 which were thoroughly briefed, argued and ruled upon by the state court after
9 multiple day hearings held a few weeks before the bankruptcy.

10 Constitutional/statute of limitations challenges by the diocese affecting all the
11 cases had been briefed, argued and ruled upon by the state court judges months
12 earlier.

13 Estimated Length of Time to Try These Cases

14 The estimated length of time for trials in all of these cases is approximately
15 two to three years. This estimate is based upon the sheer number of plaintiffs and
16 witnesses and the nature and complexity of the issues. Issues in the cases will
17 require complex expert testimony regarding childhood trauma and its effects on
18 memory, emotional and psychological injuries related to child sexual abuse and its
19 long term effects, mandatory reporting laws, organizational safe practices and
20 standards, church history, organizational structure and historical church policies and
21 practices regarding the problem of sexual misconduct by Catholic clerics.

22 Representative of the size and complexity of these cases is *John, James and*
23 *Joseph Doe v. Catholic Bishop of Spokane*, 03-2-06469-1, the first case, which was
24 set to begin trial November 29, 2004, but was halted by the announcement of a
25 pending bankruptcy filing. In *Doe*, plaintiffs identified seventy-three lay and eight

1 expert witnesses in their disclosure of primary witnesses. Defendants identified
2 seventy-six lay and 7 expert witnesses in their primary witness disclosures. Few
3 Catholic clergy sexual abuse cases have ever gone to trial. A similar case⁴ was tried
4 for eleven weeks in Texas in 1997 and a case by two brothers against the Catholic
5 Diocese of Stockton, California lasted seven weeks⁵. Based on the experiences in
6 those trials, the *Doe* case will take at least two months to try, and the *Corrigan, SB*
7 and *RF* cases with 10, 10 and 14 plaintiffs respectively can be expected to take
8 substantially longer to try because of the larger number of plaintiffs, damage
9 witnesses and forensic psychological experts on both sides.

10 DATED this 13th day of April, 2005.
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13 /s/ Timothy D. Kosnoff
14 Timothy D. Kosnoff, WSBA No. 16586
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24 ⁴ A 1997 case against the Catholic Archdiocese of Dallas with eleven victims of
priest sexual abuse and with many of the same issues lasted eleven weeks. *Kos Jury*
Awards \$ 119 Million Diocese Found Grossly Negligent Sex Abuse Judgment
Largest of Its Kind, By Ed Housewright and Brooks Egerton, Dallas Morning News,
July 25, 1997 attached as **Exhibit A**

25 ⁵ John Doe, 4a and John Doe, 4b Et Al. v the Roman Catholic Bishop of Stockton,
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